REMARKS

The Official Office Action under the mailing date of 02/09/2006 has been studied and this Application has been reviewed in light of the Examiner's remarks. This Application stands with 34 claims, of which claims 1 - 6, 8, 9 and 14 - 21 are withdrawn from consideration. Claims 12, 13, 22, 23 and 24 have been canceled. Claims 7, 10, 11, 26 - 28 and 31 - 34 stand rejected under 35 USC 103(a) as being unpatentable over U.S. 6,318,302 to Bedient ('302) in view of U.S. 6,112,357 to Halloran ('357). Claims 25, 29 and 30 are allowable.

Claims 7, 10, 11, 26 - 28 and 31 - 34 have each been amended and, it is believed each claim defines Applicant's invention, in distinctive patentable structure, over the cited references and other prior art. Each of the amended claims are drawn either to a utensil for serving food at a salad bar or to a food serving utensil for serving food at a salad bar. The '302 reference cited herein teaches a retractable leash for a dog while the '357 reference teaches an extendible golf brush. Neither of the cited references teach, show, anticipate, mention nor imply a serving utensil, used at a salad bar of serving food. In fact, neither reference has anything to do with food or the service of food.

Claim 7, in defining Applicant's invention, recites structure that is patentabality distinguishable from the cited references:

> . . . a salad bar and a sneeze shield positioned above and extending over said salad bar . . .
>
> . . . a food serving utensil . . .

This structure is not shown, taught, anticipated, mention nor implied in either of the cited references. As being obvious, how can a salad bar be related to a retractable dog leash or an extendible golf brush ? They are entirely different can not be related. The patentable distinction of claim 7, over the cited

references is obvious. The allowance of claim 7 is respectfully requested.

Claim 10 and its dependent claim 11 each distinguish patentably over the cited references '302 and '357. Each claim is drawn to an extendible food serving utensil for serving food at a salad bar. Applicant's invention is defined in part, by reciting structure such as:

> . . . a salad bar and a container
> for supporting food, supported on
> said salad bar. . .

This structure is not shown, taught, anticipated nor implied in either cited reference. It is respectfully submitted that the structure recited in Claim 10 and Claim 11 distinguish these claims patentably, over the cited references. It is respectfully requested that Claim 10 and 11 be found allowable over the cited references and other prior art.

Claim 26 and it dependent claims 31 and 32 are each drawn to a retractable food serving utensil system for partaking food from containers on a salad bar. This is not the subject matter of either the '302 reference or the '357 reference, nor the combination of the two references. Nothing in either reference teaches, shows, anticipates or implies a food serving utensil system. Claim 26 and its dependent claims 31 and 32 recite:

> . . . a container supported on a
> salad bar . . .

This structure is not taught, shown, anticipated nor implied in either of the references nor in the combination of these references nor in other prior art. It is respectfully requested that Claims 26, 31 and 32 be allowed.

Claim 27 and its dependent claims 28, 33 and 34 are drawn to a retractable food serving utensil system for partaking food from containers on a salad bar. The invention defined in each of the claims 27, 28, 33 and 34 is extremely remote from a retractable dog leash, patent '302 and from an extendible golf brush, patent

'357. Structure recited in each of these claims, such as:

> . . . a container supported on
> a salad bar . . .
> . . . a food serving utensil . . .

can not be found, is not taught, is not anticipated and is not suggested in either cited reference. Claims 27, 28, 33 and 34 each define Applicant's invention in terms that patentably distinguish over the cited references and other prior art and are entitled to allowance. Allowance of Claims 27, 28, 33 and 34 is respectfully requested.

The Examiner also rejects the above claims as:

> . . . it would have been obvious . . . to have modified the tether member of Bodient '302 with the tether member to a serving utensil as taught by Halloran '357 . . .

This rejection is made by impermissible hind-site, and will not stand question by the Court. In accordance with recent holdings in the Court of Appeals for the Federal Circuit, it has been held that obviousness can not be established by combining the teachings of prior art to produce the claimed invention, absent some teaching or suggestion in the prior art which make the combination desirable. See *Carl Schench, A.G. v Nortron Corp., 218 U.S.P.Q. 698;* and *In re Sernck, 217 U.S.P.Q. 1;* both citing *In re Imperato, 179 U.S.P.Q. 730.* See also *ACS Hospital Systems, Inc. v Montefiore Hospital, 221 U.S.P.Q. 929, 933* where the Court states:

> "Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under Section 103, teachings of references can be combined only if there is some suggestion or incentive to do so."
>
> (Emphasis in the original.)

It is respectfully submitted that the claims 7, 10, 11, 26 - 28 and 31 - 34 are patentably distinctive over the cited references and other prior art and are allowable.

Allowance of Claims 25, 29 and 30 is noted with appreciation. No additional fee is required. It is respectfully requested that the Examiner consider Applicant's position as pointed out above, reconsider the Claims 7, 10, 11, 26 - 28, and 31 - 34 and find these claims allowable.

Respectfully submitted,

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